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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,520	03/04/2002	Gary Odom		6595
40600	7590	05/23/2005		
GARY ODOM 15505 SW BULLRUSH LANE TIGARD, OR 97223			EXAMINER CERVETTI, DAVID GARCIA	
			ART UNIT	PAPER NUMBER
			2136	
DATE MAILED: 05/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/090,520	Applicant(s) ODOM, GARY	
	Examiner David G. Cervetti	Art Unit 2136	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/4/2002, 11/4/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/4/2002</u> . | 6) <input type="checkbox"/> Other: _____  |

*[Handwritten signature]*

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

- It does not state that the person making the oath or declaration has reviewed and understands the contents of the specification, including the claims, as amended by any amendment specifically referred to in the oath or declaration.
- The clause regarding "willful false statements ..." required by 37 CFR 1.68 has been omitted.

### ***Drawings***

2. The drawings filed on November 4, 2004 are objected to because they are not labeled in the top margin as either "Replacement Sheet" or "New Sheet". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes

made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 3 (page 5, line 16), 109 (page 5, line 16), 97 (page 6, line 12), 28, 27 (page 15, line 15). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 61-64 (figures 7-8), 213, 216 (figure 14), 44-45 (figure 15), 53, 56, 58, 808,

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70, 71 (figure 17), 63, 65, 72, 86 (figure 18) . Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 7 recites the limitation "said user-determined signal type" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-3 and 6-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-3 state "software creating", "software validating", and "software incrementally validating", software is considered non-statutory subject matter. Dependent claims 6-15 are rejected based on their dependency from claims 1-3.

10. To expedite a complete examination of the application, the claims rejected under 35 U.S.C. 101 (non-statutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four statutory categories of invention.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**12. Claims 1, 4, 6-8, and 16-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Zilberman (US Patent Number: 6,442,692).**

Regarding claim 1, Zilberman teaches software creating a user signature subject to subsequent validation, wherein at least part of said signature comprises at least one user-determined transmission type (column 4, lines 60-67, column 5, lines 1-27).

Regarding claim 4, Zilberman teaches a computer-implemented method for creating a user signature comprising at least one transmission, said signature subject to subsequent validation, said method comprising the following steps: receiving user determination of a transmission type of at least one transmission; recording a plurality of signal types for at least one transmission; packaging at least one recorded transmission into at least one key (column 7, lines 36-67, column 8, lines 1-39).

Regarding claim 6, Zilberman teaches wherein receiving said user determination of at least one signal type of at least one transmission of said signature (column 4, lines 60-67, column 5, lines 1-27).

Regarding claim 7, Zilberman teaches wherein said user-determined signal type is of a user-determined transmission type (column 4, lines 60-67, column 5, lines 1-27).

Regarding claim 8, Zilberman teaches wherein said signature comprises the entirety of a resource access submission (column 7, lines 37-67, column 8, lines 1-67).

Regarding claim 16, Zilberman teaches wherein receiving said user determination of at least one signal type of at least one transmission (column 5, lines 1-26).

Regarding claim 17, Zilberman teaches wherein receiving said user determination of a plurality of transmission types from a plurality of said recorded transmissions (column 5, lines 1-26).

Regarding claim 18, Zilberman teaches whereby recording a plurality of signal types emanating from a single transmission (column 5, lines 1-26).

**13. Claims 2-3, 5, 12, and 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by McKeeth (US Patent Number: 6,766,456).**

Regarding claim 2, McKeeth teaches software validating a signature comprising a plurality of signals by accessing data from a plurality of keys (column 2, lines 49-67, column 3, lines 1-51).

Regarding claim 3, McKeeth teaches software incrementally validating a signature while receiving signature input (column 3, lines 52-67, column 4, lines 1-28).

Regarding claim 5, McKeeth teaches a computer-implemented method for validating user input data comprising the following steps: accumulating possible keys



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based upon matching key data to initial input data; discarding accumulated keys based upon failure to match to subsequent input data until completing validation or by process of elimination determining validation impossible (column 3, lines 52-67, column 4, lines 1-28).

Regarding claim 12, McKeeth teaches employing at least one next key trajectory as part of said validation (column 6, lines 10-33).

Regarding claim 14, McKeeth teaches whereby said validation terminates passively (column 6, lines 10-33).

Regarding claim 15, McKeeth teaches wherein said passive termination being user-determined during creating said signature validation protocol (column 2, lines 49-67, column 3, lines 1-51).

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**15. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKeeth as applied to claim 2 above.**

Regarding claim 9, McKeeth teaches the limitations as set forth under claim 2 above. Furthermore, McKeeth teaches comparing the information entered by a user to a pattern stored in memory (column 5, lines 29-53). McKeeth does not expressly disclose accessing data stored in one or more files and said keys are in non-contiguous storage locations. However, Examiner takes Official Notice that the use of files to store information was and is conventional and well known in the art. Furthermore, files are often stored in non-contiguous storage locations. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to validate data entered by a user by accessing data stored in one or more files and in non-contiguous storage locations since Examiner takes Official Notice that the use of files to store information was and is conventional and well known in the art.

Regarding claim 10, McKeeth teaches the limitations as set forth under claim 9 above. Furthermore, McKeeth teaches comparing the information entered by a user to a pattern stored in memory (column 5, lines 29-53). McKeeth does not expressly disclose accessing data stored in one file. However, Examiner takes Official Notice that the use

of files to store information was and is conventional and well known in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to validate data entered by a user by accessing data stored in one file since Examiner takes Official Notice that the use of files to store information was and is conventional and well known in the art.

Regarding claim 11, McKeeth teaches the limitations as set forth under claim 2 above. Furthermore, McKeeth teaches comparing the information entered by a user to a pattern stored in memory (column 5, lines 29-53). McKeeth does not expressly disclose accessing data stored in different files. However, Examiner takes Official Notice that the use of files to store information was and is conventional and well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to validate data entered by a user by accessing data stored in different files since Examiner takes Official Notice that the use of files to store information was and is conventional and well known in the art.

**16. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKeeth as applied to claim 3 above, and further in view of Garcia (US Patent Number: 4,621,334).**

Regarding claim 13, McKeeth does not disclose expressly wherein said validating comprises signal matching, whereby said matching may be successful with an inexact match between stored data and corresponding submitted input data. However, Garcia teaches wherein said validating comprises signal matching, whereby

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said matching may be successful with an inexact match between stored data and corresponding submitted input data (column 5, lines 23-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to validate access when stored data and submitted data do not match exactly. One of ordinary skill in the art would have been motivated to do so to provide a personal identification system unique to the individual that cannot be utilized by a criminal even if the basic information were known (Garcia, column 1, lines 15-67).

**17. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman as applied to claim 4 above, and further in view of Wittenberg et al. (US Patent Number: 5,204,966).**

Regarding claim 19, Zilberman teaches the limitations as set forth under claim 4 above. Zilberman does not disclose expressly storing at least one fake key (a key for which authorized access is unobtainable). Wittenberg et al. teaches the use of invalid passwords that do not result in authorized access (column 1, lines 35-47, column 5, lines 30-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to store at least one fake key. One of ordinary skill in the art would have been motivated to do so to be able to control the validity of keys (Wittenberg et al., column 1, lines 35-47).

**18. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman as applied to claim 4 above, and further in view of McKeeth.**

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Regarding claim 20, Zilberman does not disclose expressly wherein packaging at least one next key trajectory in said key. However, McKeeth teaches wherein packaging at least one next key trajectory in said key (column 6, lines 10-33). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to package at least one next key trajectory in said key. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

Regarding claim 21, Zilberman does not disclose expressly wherein packaging a plurality of next key trajectories in said key. However, McKeeth teaches wherein packaging a plurality of next key trajectories in said key (column 6, lines 10-33). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to package a plurality of next key trajectories in said key. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

Regarding claim 22, Zilberman does not disclose expressly whereby said different next key trajectories are to keys in different files. However, McKeeth teaches whereby said different next key trajectories are to keys in different files (column 6, lines 10-33). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use next key trajectories to keys in different files. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

Regarding claim 23, Zilberman does not disclose expressly receiving input from a plurality of devices. However, McKeeth teaches wherein at least one transmission comprises input from a plurality of devices (column 3, lines 10-28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the input from a plurality of devices to create a user signature . One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

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**Conclusion**

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David G. Cervetti whose telephone number is (571) 272-5861. The examiner can normally be reached on Monday-Friday 7:00 am - 5:00 pm, off on Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R. Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DGC

  
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